

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of the)	WT Docket No. 03-66
Commission's Rules to Facilitate the Provision of)	RM-10586
Fixed and Mobile Broadband Access, Educational)	
and Other Advanced Services in the 2150-2162)	
and 2500-2690 MHz Bands)	
)	
Part 1 of the Commission's Rules – Further)	WT Docket No. 03-67
Competitive Bidding Procedures)	
)	
Amendment of Parts 21 and 74 to Enable)	MM Docket No. 97-217
Multipoint Distribution Service and the)	
Instructional Television Fixed Service to Engage)	
in Fixed Two-Way Transmissions)	
)	
Amendment of Parts 21 and 74 of the)	WT Docket No. 02-68
Commission's Rules With Regard to)	RM-9718
Licensing in the Multipoint)	
Distribution Service and in the)	
Instructional Television Fixed Service for the)	
Gulf of Mexico)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

Of Counsel:

Theodore D. Frank
Peter J. Schildkraut
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004
(202) 942-5790

Davida M. Grant
Gary L. Phillips
Paul K. Mancini
SBC Communications Inc.
1401 Eye Street, N.W.
Washington, D.C. 20005
(202) 326-8903

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REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. ("SBC") submits these Reply Comments in the above-captioned proceeding in support of those commentators urging the Commission to revise its current channelization plan for the spectrum to make more efficient and effective use of the spectrum. SBC provides, through its operating subsidiaries and other interests, a broad range of telecommunications services, both wireline and wireless, throughout the United States. SBC is actively exploring the use of wireless technologies to enhance the services it offers and, in connection with those activities, has recently entered into an agreement to acquire MDS spectrum from Nucentrix Broadband Networks, Inc. and its wholly-owned subsidiaries,

including Nucentrix Spectrum Resources, Inc.¹ Accordingly, SBC is interested in assuring that the spectrum currently allocated to MDS and ITFS is available for broadband local access and other potential services.

I. Summary of Position

SBC supports the opening comments that urged the Commission to adopt the new channelization plan for the 2500-2690 MHz band proposed by a coalition of MDS and ITFS interests (the “Coalition”).² It also urges the Commission to retain the current open eligibility rules for MDS facilities so that wireline carriers may hold MDS licenses and use ITFS spectrum for broadband wireless services, and to allow market forces to guide the deployment of broadband services, subject only to a requirement that licensees provide substantial service in order to enjoy a renewal preference. SBC further agrees with those who (1) oppose unlicensed use of otherwise licensed MDS and ITFS spectrum, (2) urge the Commission to continue to allow the lease of ITFS spectrum, and (3) support the adoption of a transition plan that assures

¹ An SBC subsidiary has entered into an Asset Purchase Agreement to acquire certain MDS licenses and ITFS leases from Nucentrix Broadband Networks, Inc. and its wholly-owned subsidiaries in connection with Nucentrix’s bankruptcy proceeding. *See* Nucentrix Broadband Networks, Inc., SEC Form 8-K (filed Sept. 11, 2003), *available at* <http://www.sec.gov/Archives/edgar/data/917707/000095013403012651/0000950134-03-012651-index.htm>.

SBC will use “MDS” to refer to “MMDS” as the Commission generally did in the Notice of Proposed Rule Making, *In re Amendment of Parts 1, 21, 73, 74 & 101 of the Comm’n’s Rules to Facilitate the Provision of Fixed & Mobile Broadband Access, Educ. & Other Advanced Servs. in the 2150-2162 & 2500-2690 MHz Bands et al.*, Notice of Proposed Rule Making and Memorandum Opinion and Order, 18 FCC Rcd. 6722 *passim* (2003) (“NPRM”); *see id.* at 6724 ¶ 1 n.1 (explaining this usage).

² *See* Wireless Communications Ass’n Int’l, Inc. et al., A Proposal for Revising the MDS & ITFS Regulatory Regime *in* File No. RM-10586 (filed Oct. 7, 2002), as modified by Wireless Communications Ass’n Int’l, Inc. et al., Comments (First Supplement) *in* File No. RM-10586 (filed Nov. 14, 2002); Wireless Communications Ass’n Int’l, Inc. et al., Reply Comments *in* File No. RM-10586 (filed Nov. 29, 2002); and Wireless Communications Ass’n Int’l, Inc. et al., Second Supplement *in* File No. RM-10586 (filed Feb. 7, 2003) (collectively, the “Coalition Proposal”).

that those who wish to use the spectrum for wireless broadband can effect the transition to the new channelization scheme within a reasonable planning horizon.

II. The Commission Should Adopt the Coalition's Channelization Plan for the 2500-2690 MHz Spectrum

Virtually all of the parties filing comments in this proceeding have urged the Commission to revise its current channelization plan for the 2500-2690 MHz band, and most advocate the adoption of the Coalition Proposal.³ As the Commission acknowledges in its *NPRM*, this spectrum is currently underutilized,⁴ and, as the parties supporting the Coalition Proposal have demonstrated in their comments, the current interleaved band plan constitutes the major impediment to its more effective use.

As the Commission notes, the current interleaved channelization, which was adopted for a one-way video service using the technology that was available during the 1960s, effectively prevents licensees from deploying low-power, cellularized systems for digital two-way services⁵ for which the licensees perceive a current consumer demand.⁶ Such low-power systems are incompatible with traditional high-power MDS/ITFS stations where the channels are

³ See, e.g., *In re Amendment of Parts 1, 21, 73, 74 & 101 of the Comm'n's Rules to Facilitate the Provision of Fixed & Mobile Broadband Access, Educ. & Other Advanced Servs. in the 2150-2162 & 2500-2690 MHz Bands et al.*, WT Dkt No. 03-66, RM-10586, WT Dkt No. 03-67, MM Dkt No. 97-217, WT Dkt No. 02-68, RM-9718, Comments of BellSouth Corporation and BellSouth Wireless Cable, Inc. 6-10 (filed Sept. 8, 2003) ("BellSouth Comments"); *id.*, Comments of WCA, NIA and CTN 128-31 (filed Sept. 8, 2003) ("Coalition Comments"); *id.*, Comments of Sprint Corporation 4-7 (filed Sept. 8, 2003) ("Sprint Comments"); *id.*, Comments of South Carolina Educational Television Network 1, 5-7 (filed Sept. 8, 2003).

⁴ *NPRM*, 18 FCC Rcd. at 6858 (separate statement of Chairman Powell) (referring to the band as "a large parcel of previously underutilized, prime spectrum real estate"); see *id.* at 6735-36, 6741-42 ¶¶ 27, 36.

⁵ See *id.* at 6743 ¶¶ 44-45.

⁶ See *id.* at 6735, 6741-42 ¶¶ 26, 37.

interleaved.⁷ Furthermore, adjacent channel interference protections required by the interleaved channels increase the transaction costs of a licensee's decision to deploy a low-power, cellularized system on its own channels, and these protections effectively give adjacent channel licensees a veto over whether another licensee can deploy such a low-powered system. Finally, as the Commission notes, "[S]ervice providers can operate more efficiently when they have access to large blocks of contiguous spectrum,"⁸ but the current rules break up the MDS/ITFS spectrum into non-contiguous six-MHz strips.⁹ As such, the current band plan for the MDS/ITFS spectrum does not promote the Commission's goal of "encourag[ing] the highest and best use of spectrum . . . in order to encourage the growth and rapid deployment of innovative and efficient communications technologies and services."¹⁰

As the staff concluded in the *3G Final Report*, this spectrum should be divided into separate high- and low-power segments to preserve existing uses of MDS and ITFS spectrum if licensees so desire while enabling other licensees to deploy innovative two-way wireless services.¹¹ As BellSouth and others note in their comments, the Coalition Proposal is the best of the alternatives discussed in the *NPRM*. It would maximize the spectrum available for new low-

⁷ FCC Staff, *Final Report: Spectrum Study of the 2500-2690 MHz Band – The Potential for Accommodating Third Generation Mobile Sys.* 31-32 (Mar. 30, 2001), at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-211542A1.doc ("*3G Final Report*").

⁸ *NPRM*, 18 FCC Rcd. at 6744-45 ¶ 48.

⁹ See 47 C.F.R. §§ 21.901(b), 74.902(a).

¹⁰ FCC, *Strategic Plan FY 2003-FY 2008*, at 5 (2002), at <http://www.fcc.gov/omd/strategicplan/strategicplan2003-2008.pdf>.

¹¹ *3G Final Report* at 40-41.

power services, permit both frequency division duplex (“FDD”) and time division duplex systems to operate in the band¹² and preserve the traditional, high-power operations.

None of the other alternatives would achieve as many goals. The first alternative, dividing the spectrum into two high-power and two low-power segments, would “waste” more spectrum on guard bands and allocate half as much spectrum to low-power uses¹³ as the Coalition Proposal. The second alternative, creating one low-power band and one high-power band, would preclude the use of FDD technology since FDD requires a separation between paired channels;¹⁴ and the third alternative, which requires an across-the-board power reduction to accommodate low-power operations, would hamper the continued operation of existing high-powered services. It is inconsistent with the Commission’s recognition that “service providers can operate more efficiently when they have access to large blocks of contiguous spectrum.”¹⁵ This third alternative would thus require licensees to negotiate channel swaps privately in order to obtain contiguous spectrum blocks, thereby imposing heavy transaction costs on the licensees and hindering their ability to obtain necessary financing.

¹² Cf. *In re Amendments to Parts 1, 2, 27 & 90 of the Comm’n’s Rules to License Servs. in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, & 2385-2390 MHz Gov’t Transfer Bands*, Report and Order, 17 FCC Rcd. 9980, 10030-31 (2002) (“When establishing technical limits for these bands, we prefer to take a technology-neutral approach that will allow licensees to implement a broad range of services and technologies. Thus we do not believe that the public interest would be served if we were to adopt technical requirements that would tend to favor one technology over another.”).

¹³ According to the Commission, both incumbent MDS and incumbent ITFS licensees “appear to believe that the predominant future use of this band will be low power” services. *NPRM*, 18 FCC Rcd. at 6747 ¶ 57.

¹⁴ See *id.* at 6746 ¶ 52.

¹⁵ *Id.* at 6744-45 ¶ 48.

Given the near-unanimous support for Coalition’s proposed channelization plan, the Commission should adopt the Coalition Proposal as the one that best balances those objectives.¹⁶ As BellSouth concludes, “[T]he Coalition Plan more accurately reflects the marketplace need for more low-power spectrum to accommodate the demand for and expected growth of advanced services.”¹⁷

III. The Commission Should Provide for an Orderly Transition

In the *NPRM*, the Commission discusses a number of potential plans for transitioning the existing licensees of this spectrum to the new channelization plan. Without venturing into the specifics of those transition proposals, SBC believes that any viable plan would have two characteristics. First, any transition plan should allow the proponent of the transition to initiate the process. By allowing the party that believes there is a market for its proposed service to begin the process, the Commission would allow the marketplace to determine the transition.

Second, the transition plan should provide a finite amount of time for the parties to complete their negotiations once the transition process is initiated. In order for that process to work, the proponent should have the right to impose a default solution if an impasse remains at the end of this period, or the Commission should provide for a simple means of resolving the dispute. Without such certainty for proponents, incumbents would be able to engage in strategic behavior to appropriate all the gains to be had from the transition; intelligent planning would be impossible; and the efficient use of this spectrum would be delayed further – none of which would serve the public interest.

¹⁶ SBC notes that the Commission does “not contemplate reclaiming licenses from any incumbent licensees, so long as they comply with any revised technical, service or other rules that we adopt for this band.” *Id.* at 6771 ¶ 116. SBC supports that approach – any other would upset the legitimate expectations of current licensees. Although the context of the Commission’s statement makes it unclear whether it refers to MDS licenses as well as ITFS, there is no basis for distinguishing between the two classes of licenses on this question.

¹⁷ BellSouth Comments at 9.

IV. Wireline DLS Providers Should Be Permitted to Hold MDS Spectrum and Lease ITFS Spectrum

As both BellSouth and Sprint have demonstrated,¹⁸ the Commission should continue to permit wireline DSL providers to hold and acquire MDS and ITFS spectrum rights.¹⁹ Changing this policy would be an arbitrary and capricious deviation from the Commission's precedent, which permits eligibility restrictions in narrowly defined situations. In any event, such a change is not necessary to preserve competition in the market for broadband services. To the contrary, it both would inhibit such competition and would slow the deployment of broadband services in rural areas.

The record does not – and cannot – justify barring wireline DSL providers from holding or obtaining MDS and ITFS spectrum rights. “Under [Commission] precedent, eligibility restrictions should be imposed *only* when (1) there is a *significant likelihood of substantial competitive harm in specific markets*, and, (2) only when eligibility restrictions are an *effective way to address such harm*.”²⁰ Further, any such restriction must be narrowly tailored so that it “is *necessary* to ensure that consumers will receive communications services in a spectrum-efficient manner and at reasonable prices.”²¹ As “there are numerous other sources of actual and

¹⁸ See BellSouth Comments at 14-25; Sprint Comments at 22-23.

¹⁹ In that connection, the Commission should retain the existing rules on the leasing of ITFS spectrum. As several of the commenting parties have noted, retaining the existing rules giving ITFS licensees flexibility in negotiating ITFS leases would permit those licensees to achieve their legitimate educational objectives while allowing others to gain access to valuable spectrum for other services. See, e.g., Coalition Comments at 128-31.

²⁰ *NPRM*, 18 FCC Rcd. at 6773 ¶ 121 (emphasis added).

²¹ *Id.* (citing 47 U.S.C. § 151) (emphasis added).

potential competition” for wireless local loop, including broadband,²² permitting wireline DSL carriers to use MDS and ITFS spectrum cannot pose a significant likelihood of substantial competitive harm. To the contrary, given the highly competitive nature of the market, market discipline would cure any attempts to exercise market power.

Moreover, wireline DSL carriers do not have any market power to protect through any potential misuse of MDS and ITFS spectrum. The data cited in the *NPRM* show that cable modem providers have roughly double the market share of wireline DSL carriers;²³ and, while more recent data indicate that wireline carriers are enjoying greater acceptance for their broadband offerings,²⁴ they still manifestly lack the ability to dominate the market. Therefore, under the Commission’s own precedent, it would be arbitrary and capricious for it to impose new, restrictive rules limiting the ability of wireline DSL providers to hold and acquire MDS and ITFS spectrum rights.²⁵

Limiting the ability of wireline carriers to acquire this spectrum also would deprive the public of access to broadband services, contrary to express Commission policy²⁶ and the mandate

²² *In re Amendment of the Comm’n’s Rules Regarding the 37.0-38.6 GHz & 38.6-40.0 GHz Bands*, Report and Order and Second Notice of Proposed Rule Making, 12 FCC Rcd. 18600, 18603 ¶ 33 (1997).

²³ *NPRM*, 18 FCC Rcd. at 6774 ¶ 123.

²⁴ See, e.g., *USTA Pressing Hard for Regulatory Change; Legislation Possible*, Comm. Daily (Oct. 15, 2003), available at 2003 WL 5756638 (noting that “J.D. Power’s customer surveys indicated that DSL had passed cable modems for the first time as the first choice of those likely to add broadband Internet”).

²⁵ Further, there is no evidence that a wireless-only broadband service could survive as a viable stand-alone competitor. Thus, precluding wireline carriers from acquiring this MDS/ITFS spectrum for DSL services could result in this spectrum remaining underutilized while also depriving residences and businesses of broadband service or limiting their options to cable-modem service.

²⁶ See, e.g., *In re Inquiry Concerning High-Speed Access to the Internet over Cable & Other Facilities; Internet over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet over Cable Facilities*, Declaratory Ruling and Notice of Proposed

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of Section 706 of the Telecommunications Act of 1996.²⁷ Given the current technological limitations on wireline DSL service,²⁸ carriers cannot provide the service to many customers – rural and non-rural – in their territories.²⁹ Spectrum in the 2500-2690 MHz band offers them the opportunity to fill in the gaps in their footprints caused by the limits of wireline technology. Thus, preserving the eligibility of wireline DSL carriers to use this spectrum would enable them to offer a competitive alternative to customers who only have access to cable modem service at present. In addition, allowing wireline companies to use this spectrum for DSL and other broadband services would facilitate the deployment of broadband services to rural areas, where the population density makes wire-based services uneconomic. Accordingly, the Commission should not preclude wireline carriers from acquiring this spectrum and using it for DSL or other broadband services both in urban and rural areas.³⁰

V. The Commission Should Abandon Its Construction Deadlines and Allow Market Forces To Guide the Deployment of Broadband Services

The Commission’s current command-and-control regulations requiring licensees to meet construction benchmarks to keep their MDS licenses are not necessary to bring about the

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Rulemaking, 17 FCC Rcd. 4798, 4801 ¶ 4 (2002) (stating “the Commission’s primary policy goal is to encourage the ubiquitous availability of broadband to all Americans” (internal quotation marks omitted)) (subsequent history omitted).

²⁷ 47 U.S.C. § 157 note.

²⁸ As BellSouth notes, “Using currently available technology, DSL is available only to customers whose lines are within 18,000 feet from a local exchange carrier’s DSL network equipment.” BellSouth Comments at 16 n.28.

²⁹ See *NPRM*, 18 FCC Rcd. at 6775-76 ¶ 125.

³⁰ Besides violating the Administrative Procedures Act as arbitrary and capricious, see 5 U.S.C. § 706(2)(a), such a decision would violate Section 706(a) of the Telecommunications Act of 1996 as well, see 47 U.S.C. § 157 note (“The Commission . . . shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”).

deployment of broadband services.³¹ Moreover, these regulations are inconsistent with the Commission's standard approach in recent proceedings to require only that licensees provide substantial service in order to obtain a renewal presumption.³² The same principles should be applied here.

First, there is no reason to believe that market forces will not assure that this spectrum is used efficiently and well. As the Commission recognizes in its *NPRM*, there is a current demand for broadband and mobile services for which this spectrum can be used.³³ Given the highly

³¹ Since the Commission is proposing to allow this spectrum to be used for fixed and mobile services, it is premature to assume that the spectrum would be used exclusively for DSL or similar broadband services rather than for other services which rural areas do not lack. See *NPRM*, 18 FCC Rcd. at 6774-75 ¶ 123 (stating "we anticipate that this spectrum will be largely used as a mobile voice and data service"); *In re Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report & Analysis of Competitive Mkt. Conditions with Respect to Commercial Mobile Servs.*, Eighth Report, 18 FCC Rcd. 14783, 14835-38 ¶¶ 111-20 (2003) (presenting data and concluding that "effective CMRS competition does exist in rural areas").

³² See *In re Amendment of Part 95 of the Comm'n's Rules to Provide Regulatory Flexibility in the 218-219 MHz Serv.*, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd. 1497, 1538 ¶ 70 (1999), *aff'd mem. sub nom. Graceba Total Communications, Inc. v. FCC*, 254 F.3d 315 (D.C. Cir. 2000) (other subsequent history omitted); *In re Rulemaking to Amend Parts 1, 2, 21, & 25 of the Comm'n's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules & Policies for Local Multipoint Distribution Serv. & for Fixed Satellite Servs. Petitions for Reconsideration of the Denial of Applications for Waiver of the Comm'n's Common Carrier Point-to-Point Microwave Radio Serv. Rules; Suite 12 Group Petition for Pioneer Preference*, Fourth Report and Order, 13 FCC Rcd. 11655, 11664-68 ¶¶ 15-23 (1998) (subsequent history omitted); *id.*, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd. 12545, 12660-61 ¶¶ 269-71 (1997), *aff'd sub nom. Melcher v. FCC*, 134 F.3d 1143, 1161-62 (D.C. Cir. 1998) (other subsequent history omitted); *In re Serv. Rules for the 746-764 & 776-794 MHz Bands, & Revisions to Part 27 of the Comm'n's Rules*, First Report and Order, 15 FCC Rcd. 476, 504-08 ¶¶ 67-78 (2000) (subsequent history omitted); *In re Amendment of the Comm'n's Rules to Establish Part 27, the Wireless Communications Serv. ("WCS")*, Report and Order, 12 FCC Rcd. 10785, 10843-44 ¶¶ 111-14 (1997) (subsequent history omitted); *In re Amendment of Parts 2 & 90 of the Comm'n's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz & the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, Implementation of Sections 3(n) & 322 of the Communications Act*, Third Order on Reconsideration, 11 FCC Rcd. 1170, 1171 ¶ 5 (1995).

³³ *NPRM*, 18 FCC Rcd. at 6735, 6341-42 ¶¶ 26, 37.

competitive nature of the market for broadband, the licensees of the MDS and ITFS facilities will build out the facilities to meet that need.³⁴

Second, as the Commission recognized in issuing the *NPRM*, the current use of the 2500-2560 band is a hodgepodge of licenses issued under different regulatory regimes. Making sense of the band without shutting down existing services or revoking existing licenses would require a substantial transition period as existing licensees are relocated to new frequencies and other changes are implemented. An arbitrary deadline established by regulatory fiat would make the transition more difficult and could make raising capital more difficult as the financial markets still view the telecommunications industry with caution.

Third, construction requirements likely would result in the construction of facilities solely to meet regulatory requirements rather than market conditions. As a result, facilities may be constructed inefficiently, guided more by regulatory necessity than the need to provide least-cost service to consumers. The consequence, of course, would be unnecessarily high rates.

Fourth, construction benchmarks also would make MDS and ITFS licensees the only broadband service providers with such an obligation even where it is uneconomical for them to meet it. Such a requirement would be inconsistent with the pro-competitive policies of the Communications Act by handicapping the *new entrant* into the broadband services market.³⁵

³⁴ While the present state of broadband deployment in rural areas would not be sufficient as a long-term result, the Commission's own data demonstrate that the supply of broadband service in rural areas continues to grow rapidly – based on market forces alone. See FCC News Release, *Fed. Communications Comm'n Looks at Data on Growth of Broadband Subscribership in Rural Areas* (Aug. 6, 2003), at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-237388A1.pdf (noting that, between December 1999 and December 2002, the percentage of zip codes with at least one high-speed service provider with at least one subscriber went from 60 to 88; the percentage with at least four providers went from ten to 39; the percentage with at least seven providers went from one to 17; and the percentage of occupied housing units in North Carolina – the state with the second largest rural population – subscribing to broadband “jumped” from one percent to 17 percent, which was comparable to the national average).

³⁵ See *In re Implementation of the Non-Accounting Safeguards of Sections 271 & 272 of the Communications Act of 1934, as Amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 21905, 21907 ¶ 1 (1996) (“The intent of the 1996 Act is ‘to provide for a

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Finally, whatever goals the Commission might seek to achieve by construction deadlines or benchmarks can be achieved by a requirement that the MDS licensee provide substantial service at the time its initial license expires in order to obtain a renewal expectancy. As noted above, that is the approach the Commission has taken for other wireless services, and there is no reason that it would not work as well in this area.³⁶

VI. The Commission Should Not Permit Unlicensed Use of Otherwise Licensed MDS and ITFS Spectrum

SBC opposes the Commission's suggestion that it might allow an underlay of unlicensed operation in the MDS/ITFS band. Virtually all of the commenters oppose that proposal on the ground that there is insufficient evidence that unlicensed use of the MDS and ITFS spectrum can peaceably coexist with licensed uses and would not cause harmful interference.³⁷ As BellSouth and Sprint note, after-the-fact remedies would, in fact, be no remedy for the damage that any such interference might cause to licensees, assuming the causes of the harmful interference could be identified and stopped.³⁸ Uncertainty about interference problems would dampen investments

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pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.” (quoting Joint Statement of Managers, S. Conf. Rep. No. 104-230, at 1 (1996), *reprinted in* 1996 U.S.C.C.A.N. 4, 10)) (subsequent history omitted).

³⁶ Furthermore, in light of the uncertainties caused by this proceeding and that would be caused by the transition to a new band plan, the Commission should waive the existing construction deadlines faced by current MDS and ITFS licensees and should abolish Section 21.303(d) of the rules, 47 C.F.R. § 21.303(d) (providing for license forfeiture if the station is silent for a 12-month period any time after the construction certification has been filed). Instead, consistent with the rules for other auctioned services, construction obligations should be altered to require the provision of substantial service prior to the expiration of the license term. *See, e.g., id.* §§ 27.12-13, 101.17, 101.526-527, 101.1011.

³⁷ *See, e.g.,* BellSouth Comments at 26; Sprint Comments at 9, 11-12; Coalition Comments at 65-67.

³⁸ BellSouth Comments at 27-28; Sprint Comments at 10-11.

in MDS and ITFS operators, limiting their ability to provide competitive or innovative services. Moreover, customers whose communications have been disrupted – or who even fear that they might be – would flee to competitors perceived to be more reliable, principally the cable modem and DSL operators in the case of broadband service.

In short, interference concerns would inhibit both the supply of and demand for wireless services on this spectrum, precisely the opposite effects sought for this proceeding. The Commission needs to do much more to resolve the legitimate questions that have been raised about potential interference before an unlicensed underlay could even possibly be in the public interest.

VII. Conclusion

For the reasons set forth above, SBC respectfully requests that the Commission

- adopt the Coalition Proposal for the rebanding of the 2500-2690 MHz spectrum,
- provide for an orderly transition,
- permit wireline DSL providers to hold and acquire MDS and ITFS spectrum rights,
- let market forces guide the deployment of broadband services, subject only to a requirement that the licensee provide substantial service at the end of its initial license term, and
- not permit the unlicensed use of otherwise licensed MDS and ITFS spectrum.

Respectfully submitted,

/s/ Davida M. Grant

Davida M. Grant

Gary L. Phillips

Paul K. Mancini

SBC Communications Inc.

1401 Eye Street, N.W.

Washington, D.C. 20005

(202) 326-8903

Of Counsel:

Theodore D. Frank

Peter J. Schildkraut

Arnold & Porter

555 12th Street, N.W.

Washington, D.C. 20004

(202) 942-5790

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